factors courts look to in determining whether a seizure occurred specifically in the context of an airport stop such as that in the case at bar. These factors include the officer wearing a uniform, see United States v. Armstrong, 722 F.2d 681, 684 (11th Cir. 1984); the display of a weapon, see Mendenhall, 446 U.S. at 555-56; the officer physically touching the person in question, see id.; see also Armstrong, 722 F.2d at 684; the officer retaining a person's plane ticket or identification, such as a driver's license, see Berry, 670 F.2d at 597; United States v. Elsoffer, 671 F.2d 1294, 1297 (11th Cir.1982); an officer blocking the person's path or impending his or her progress, see id.; see also United States v. Puglisi, 723 F.2d 779, 783 (11th Cir. 1984); and an officer's statement that the person is the focus of an investigation or is suspected of smuggling drugs, see Puglisi, 723 F.2d at 783; United States v. Robinson, 625 F.2d 1211, 1216-17 (5th Cir. 1980). Furthermore, and highly relevant to the facts here, "[a]n officer's asking an individual to accompany him or her to an office is an intrusive request that raises a presumption that the individual would not feel free to leave absent 'exceptionally clear evidence of consent.'" United States v.Espinosa-Guerra, 805 F.2d 1502,1507 (11th Cir.1986), quoting United States v. Alvarez-Sanchez, 774 F.2d 1036, 1041 (11th Cir.1985). Upon a thorough review of these factors as applied to the encounter between the DEA agents and Ms.

Stanford, the Court concludes that no seizure occurred within the meaning of the Fourth Amendment.

First, when Agents Miles and Johnson first approached Ms. Stanford, in the public gate area, the two men were in plain clothes, with no outward indicia of their official positions. Second, these two men were not carrying any weapons that were visible to Ms. Stanford or any other person in the general vicinity. Third, neither agent had any physical contact with Ms. Stanford, and there was only a brief display of authority when the agents withdrew their DEA credentials. See Florida v. Royer, 460 U.S.491, 497 (1983)(plurality op.) (stating that "the fact that the officer identifies himself as a police officer" does not "cover the encounter into a seizure…"). This situation is similar to that in Armstrong, where the court found under similar circumstances that "[t]his type of contact does not rise to the level of a seizure and thus is outside the realm of fourth amendment protection." 722 F.2d at 684. Additionally, although Agent Miles asked for Ms. Stanford's ticket and identification, which she freely produced, Agent Miles returned these items to Ms. Stanford almost immediately. Agent Miles never told Ms. Stanford that she was the target of an

investigation.[10] This type of routine, nonthreatening conduct, whereby an officer is allowed simply to check a person's basic information, does not rise to the level of a seizure. See Puglisi, 723 F.2d 784 (finding no seizure where officer asked individual twice for plane ticket and once for driver's license and "return[ed] them promptly each time").

However, after this brief, public encounter, the agents then asked Ms. Stanford to accompany them to the DEA's airport office for further questioning. Although Ms. Stanford consented, this type of "intrusive request" triggers a presumption that a reasonable individual would not feel free to leave. This warrants a more searching inquiry by the court and requires a heightened showing of the individual's voluntary consent. See Espinosa-Guerra, 805 F.2d at 1507. Particularly troubling here is the fact that there is no evidence that Ms. Stanford was ever told that she was free to leave. Agent

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[10] Agents Miles and Johnson testified that the conversation had begun by Agent Miles explaining what the DEA's purpose is in performing drug interdiction at the airport, and how private citizens can help in that regard. Ms. Stanford testified that Agent Miles never said anything of this nature. Regardless of whether this was said or not, there is no indication that Agent Miles ever said anything about Ms. Stanford herself being the target of a drug investigation.

Miles testified that had Ms. Stanford attempted to leave, he would have let her go. However, no one ever told Ms. Stanford this. Cf. Armstrong, 722 F.2d at 684 (finding no seizure where officer notified individual that he was free to leave). However, Ms. Stanford consented to going with the agents and never showed any outward signs of her desire to leave.[11] Although the record is replete with her statements about how she felt that she was not free to leave, this is not the appropriate inquiry. It is not the individual's subjective state of mind that is the focus of the inquiry; it is an objective consideration of how a reasonable person would feel. This allows law enforcement officials to fulfill their professional duties with objective guidelines in mind, and prevents them from being forced to try to view the situation from one particular individual's point of view. This is how law enforcement officials know when their actions require that an individual be read his or her Miranda rights, for example, or when, as here, a

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[11] **Ms. Stanford testified that the agents "behaved the way police officers behave when they stop someone and they want someone to come with them." If the Court were to accept this-officers behaving as officers-as all that is required for a police encounter to qualify as a Fourth Amendment seizure, it would seemingly vitiate the well-established principle that "not all police-citizen encounters are within the protective scope of the fourth amendment." Espinosa-Guerra 805 F.2d at 1506.**

Fourth Amendment seizure has taken place such that the officials need to have reasonable suspicion to proceed.

On these facts, Ms. Stanford was not seized when she accompanied the DEA agents to the airport office. Although "[s]ilently following an officer almost never constitutes sufficient evidence of consent, "Espinosa-Guerra, 805 F.2d at 1508, Ms.Stanford testified that Agent Miles "asked [her] to accompany him to that room," and that the agents "asked [her] to come with them and sit there…[and that she] did what they asked." The door to the office in which the interview was conducted was open at all times. A in the encounter at the airport gate, there was no show of force by the DEA officials. Ms. Stanford never asked to leave, nor did she physically attempt to do so.
Therefore, the facts offer "clear evidence" that Ms. Stanford voluntarily consented to accompanying the agents to the DEA office, and she was not seized within the meaning of the Fourth Amendment.

Even if the Court were to find Ms. Stanford's consent to go to the office for further questions not to have been given voluntarily, by the time the officers asked her this, they had developed a reasonable suspicion sufficient to overcome the Fourth Amendment proscriptions on such seizures.

"Once a stop has been held a seizure, it can be constitutional only if based upon reasonable suspicion. The Supreme Court has defined reasonable suspicion as "specific and articulable facts which, taken together with rational inferences from those facts, warrant [an] intrusion.'"Berry, 670 F.2d at 598, quoting Terry v.Ohio, 392 U.S.1,21(1968). It was not a mere hunch that caused the agents to request that Ms. Stanford accompany them to the DEA office. Agent Miles knew that Ms. Stanford was arriving in Miami from New York City, two source cities for narcotics and related activity. See United States v. Cooper, 873 F.2d 269, 274 (11th Cir.1989) ("Miami, Florida, is a significant drug distribution city for the entire United States."); Espinosa-Guerra, 805 F.2d at 1508.

He also knew that Ms. Stanford had on her person a large sum of U.S.currency, wrapped in black plastic and Christmas paper. See United States v. Rojas, 671 F.2d 159, 164-65 (5th Cir. Unit B 1982) (concluding reasonable suspicion supported seizure in large part because individual was carrying large amount of cash). Moreover, Agent Miles, as well as Agent Johnson, are experienced DEA agents who have received extensive training in airport drug interdiction operations. These two men were aware of the possible significance of the situation unfolding before them. See Puglisi, 723 F.2d at 789 (relying in part on the experience of the DEA agent in concluding that reasonable

suspicion existed under the totality of the circumstances). Therefore, the agents had a reasonable, articulable
suspicion sufficient to justify the possible seizure of Ms. Stanford .

In sum, Ms. Stanford was not "seized" within the meaning of the Fourth Amendment when the agents approached and asked her questions concerning the currency at the gate. Ms. Stanford then voluntarily consented to accompanying the agents to the DEA office for further questions.
Finally, even If the voluntariness of Ms.Stanford's consent were in doubt, the agents had by that time developed reasonable, articulable suspicion of possibly criminal activity. Therefore, under these facts, the salutary strictures of the Fourth Amendment were not violated, and the evidence is freely admissible in the government's probable cause case.

III.Procedure in Civil Forfeiture Actions

Forfeiture proceedings have had a long and colorful history. See Austin v.United States, 509 U.S.602,611-614(1993)(describing the law of forfeiture in England at time of passage of the Eighth Amendment). Since their beginning, the forfeiture laws have undergone extensive development.
In our current legal system, forfeiture proceedings can be in personam, which is to say, predicated upon the wrongdoing of a

person who is then forced to forfeit his or her property as punishment; or purely civil in rem proceedings, wherein it is property itself, wholly apart from its owner, that is claimed to have been involved in the offense.[12]

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[12] In United States v. Bajakajian, 524 U.S.321 (1998), The Supreme Court had occasion to visit the issue of the distinction between these two types of proceedings:

The Forfeiture in this case does not bear any of the hallmarks of traditional civil in rem forfeitures. The Government has not proceed against the currency itself, but has instead sought and obtained a criminal conviction of respondent distinct from potentially punitive in peronam civil penalties....." United States v. Ursery,518 U.s. 267,278 (1996).In an in rem forfeiture proceeding , "[I]t is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient." Various Items of Personal Property v. United States, 282 U.S.577,581 (1931); see also Austin, 509 U.S. at 624 (Scalia, J., concurring in part and concurring in the judgment)("The theory of in rem forfeiture is said to be that the lawful property has committed an offense."). An in personam forfeiture action is markedly different in that such an action is in herently intertwined with the punishment of the person; it is most often part and parcel of the punishment imposed for a criminal conviction. See Bajakajian, 524 U.S.at 332("[I]n personam, criminal forfeitures....have historically been treated as punitive, being part of the punishment imposed...."). Such would be the case, for example, in a conviction of a large-scale drug trafficker, whose house was then forfeited due to its use in connection with the drug trade. Forfeiture of the house is part of the

personally. The forfeiture serves no remedial purpose, is designed to punish the offender, and cannot be imposed upon innocent owners. Section 982(a)(1) thus descends not from historic *in rem* forfeitures of guilty property, but from a different historical tradition: that of *in personam*, criminal forfeitures. Such forfeitures have historically been treated as punitive, being part of the punishment imposed for felonies and treason in the Middle Ages and at common law.
Id.at 31-32.Similarly, in his opinion for the Court in *Ursery*, Chief Justice Rehnquist explained that

Since at least *Various Items*, we have distinguished civil penalties such as fines from civil forfeiture that are in rem. While a 'civil action to recover …penaltie[s[, is punitive in character,' and *much like a criminal prosecution* in that '[i]t is the wrongdoer in person who is proceeded against….and punished,' in an *in rem*

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punishment of the trafficker. As is apparent, these proceedings depend upon the guilt of the owner, not just of the property itself, and therefore are properly entitled to more of the constitutional protections accorded criminal proceedings. See infra note 14 (mentioning recent Supreme Court cases addressing the intersection of civil forfeiture proceedings and constitutional safeguards). In contrast,in rem proceedings are separate and apart from the criminal behavior and possible culpability of anyone (or anything) save the property itself. See Usery, 518 U.S. at 289("Congress

forfeiture proceeding, 'it is the property which is proceeded against, and by resort to a legal fiction, held guilty and condemned.' 518U.S.at 283, *quoting Various Items*, 282 U.S.at 580-81 (emphasis added). The proceedings here are far from "like a criminal prosecution"; no allegations are leveled against Ms. Stanford, nor is there any indication whatsoever that she herself was involved in any narcotics-related wrongdoing. This is a pure civil *in rem* forfeiture proceeding. specifically structured these [7881] forfeitures to be impersonal by targeting the property itself.").

But *see id.*at 295 (Kennedy,J.,concurring) ("Distinguishing between *in rem* and *in personam* punishments does not depend upon,or revive, the fiction.....that the property were punished as if it were a sentient being capable of moral choice. It is the owner who feels the pain and receives the stigma of the forfeiture, and the property.")(citations omitted). Certain issues arise in a criminal *in personam* forfeiture proceedings that are not implicated by a purely civil *in rem* action. Simply put, allegations concerning the guilt of a person are substantively, and hence procedurally, different than actions brought solely against property. As Justice Kennedy explained in his concurrence in *Ursery*,

> True, the forfeiture statutes require proof of a violation of a drug trafficking or other offense, but the purpose of this

predicate showing is just to establish that the property was used in a crime. In contrast to criminal forfeiture, civil *in rem* forfeiture actions do not require a showing that the owner who stands to lose his property interest has committed a criminal offense.

Id.at 296(citations omitted). In sum, "civil *in rem* forfeiture is not punishment of the wrongdoer for his criminal offense."Id.at 293.

In the case at bar, no proceedings were against Ms. Stanford, nor was she ever arrested in connection with these funds. The gravamen of the government's allegations here concerns the currency's alleged guilt of being connected to an illicit narcotics transaction. Aside from her posture as a possessory claimant to the money, Ms. Stanford could be said to be irrelevant. This is not an attempt to punish Ms. Stanford herself for any type of criminal offense. Indeed, this is a quintessential civil *in rem* forfeiture action.

Section 881 of Title 21 of the United States Code sets forth in relevant part the following:

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

....

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Id.& 881(a)(6). The heart of the issue here, however, and in a slew of other forfeiture cases brought under this section, is the standard by which the government may legitimately seize the property in question. The statute provides for lawful seizure of the property when "the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter." Id.& 881(b)(4).[13] Congress contemplated that the civil forfeiture laws be "the ideal weapon for breaking the backs of sophisticated narcotics operations," for

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[13] The burden-shifting scheme of section 881 is set forth in 19 U.S.C.& 1615. See United States v. Ursery, 518 U.S.267,289(1996).

they would attack such operations at their base of economic power. See S.Rep.No.225,98th Cong., 2d Sess.191 (1983), reprinted in 1984 U.S.C.C.A.N.3182,3374. Following the laws' enactment, however, there has been great debate over the proper burden which the government must meet in order legitimately to seize an individual's property, be it a house, automobile, or cash.[14]Recently,

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[14] Claimant also raised an issue concerning the direction in which Supreme Court jurisprudence in the area of civil forfeiture is heading, based upon an assessment of *United States v.Bajakakian*,524 U.S.321 (1998); *Austin* v. United States, 509 U.S.602(1993); and United States v. *James Daniel Good Real Property*, 510 U.S,43(1993). These three cases imported some constitutional protections into civil forfeiture proceedings. The Supreme Court took the first step in this process when, in *James Daniel Good Real Property*, it held that "[u]nless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture."510 U.S.at 62. More recently, Bajakajian held that forfeiture are "fines" if they constitute punishment for an offense, and that such fine must not be grossly disproportional to the offense. See 524 U.S.at 343-44. This decision thus clarified the role of the English Amendment's Excessive Fines Clause, which was first incorporated into civil forfeiture proceedings by Austin. See 509 U.S.at 622. All three cases dealt with forfeiture proceedings growing out of the underlying wrongdoing of the owner: in Bajakajian, it was the owner's failure to report exported currency; in Austin, it was the sale of cocaine; and in James Daniel Good Real Property, it was a conviction for the promotion of a harmful drug-marijuana. For this reason alone, these cases are distinguishable from

Congress responded to this concern by amending the civil forfeiture statute so that the government is required" toe stablish, by a preponderance of the evidence, that the property is subject to forfeiture." Civil Asset Forfeiture Reform Act of 2000, H.R.1658 Cong.& 2(c). In introducing this legislation, various and diverse voices were heard in its support. Senator Orrin Hatch concluded that "[w]hile civil forfeiture is a valuable law enforcement tool, it has become increasingly clear that some reform of civil forfeiture law is necessary given the numerous

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the situation at bar, which is a pure civil in rem proceeding. There are no-nor have there ever been any- allegations of criminal behavior leveled against Ms. Stanford in connection with this occurrence. Claimant, however, asserted that this line of cases, taken to its logical conclusion, signifies that all civil forfeiture proceedings are entitled to all the protections of criminal proceedings. Specifically, this would mean, in claimant's view, that the government would bear the burden of proving beyond a reasonable doubt the forfeitability of seized property. Congress has edged somewhat closer toward this standard in the most recent civil forfeiture law amendments. However, this Court finds that to read as much into the above-mentioned Supreme Court cases would be to extend their respective logic past the breaking point. It would effectively put an end to law enforcement officials' legitimate use of the civil in rem forfeiture laws and allow many illicit narcotics enterprises to retain the proceeds of their lawlessness. The Court finds that neither the Constitution nor this line of cases require of the government such a high burden of proof in this purely in rem civil forfeiture proceeding.

controversial seizures of property in the last decade" and that "[f]ederal civil forfeiture procedures…. Provide inadequate protections for private property …." 146 Cong.Rec.S1753-02,1759(2000).[15]This Act was passed in early 2000.[16]

Under the earlier forfeiture laws applicable to this case, the claimant must first establish standing, whereupon the burden shifts to the government to show probable cause for forfeiture of asset. If the government meets this standard, the burden shifts back to the claimant to prove by a preponderance of the evidence that the property is derived from a legitimate source

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[15] See also id.at 1759-60(statement of Sen.Leahy)("This is a significant improvement over the current system and should go a long way toward stemming the abuses that have so offended Americans across the country and the political spectrum. It is not often that we see the U.S.Chamber of Commerce, ACLU, NRA, National Association of Criminal Defense Lawyers, American Bankers Association, Institute of Justice, Americans for Tax Reform, and the American Bar Association joining together on the same side of a legislative effort.")

[16] The increased burden placed on the government does not apply to the case at bar, which was commenced in May of 1999, as the Act applies only "to any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment…." Civil Asset Reform Act of 2000,H.R.1658, 106th Cong.§ 21; see also United States v. Carrell, 252 F.3d 1193, 1202 n.10(11th Cir. 2001); United States v. Ahmad, 213 F.3d 805, 808 n.1 (4th Cir.2000)(briefly discussing Reform Act's parameters).

or that the claimant is an "innocent owner." See, e.g., United States v. $121.000.00 in United States Currency, 999 F.2d 1503, 1505 (11th Cir.1993).

A.Standing

First, a claimant must establish standing as an owner of the property at issue. See United States v. One Parcel of Real Property at 1012 Germantown Rd., Palm Beach County, Fla.,963 F.2d 1496, 1500 (11th Cir.1992). The claimant must "claim an ownership or possessory interest in the property seized." United States v. Five Hundred Thousand Dollars, 730 F.2d 1437,1439 (11th Cir. 1984). The burden of proof of establishing standing in such forfeiture proceedings is on the claimant. See id. The interest that a claimant need assert in order to have standing "need not be an ownership interest; including a possessory interest. See United States v. $191.,910.00 in U.S.Currency, 16 F.3d 1051,1057 (9th Cir.1994). The issue of standing to assert a claim in a forfeiture action is a question of law. See United States v. Real Property at 5000 Palmetto Dr., 928 F.2d 373,375 (11th Cir.1991).

There is some question of standing here that causes the Court briefly to dwell on the issue. When first asked about the money in question, Ms. Stanford disclaimed all but a possessory interest in it, saying that she

had received it from "some people," whom she was unable to identify or to state a reason why "some people" would give her such a large amount of cash. Later on in the interview with Agent Miles, while still in the office at the Miami airport, Ms. Stanford revised this answer by stating that she had in fact received a call from her brother, who told her to "pick up some money" for Mike's Import and Export USA, Inc.(Mike's"). Therefore, the actual claimant would be the corporate entity acting on its own behalf through its agents. However, no verified claim was ever filed on behalf of Mike's. Although the amended verified complaint filed by Ms. Stanford on August 11,1999, is captioned "AMENDED AND VERIFIED SUPPLEMENTAL CALIM OF DEBORAH STANFORD, Individually and as Shareholder, Officer and Director of Mike's Import & Export USA, Inc. a Florida corporation," the corporation itself never asserted a claim. Just as a corporation can sue in its capacity as a corporate entity, so too can a corporation assert a claim in a forfeiture proceeding. Therefore, as an initial matter, the Court finds Mike's did not establish standing in its corporate capacity in the present case.[17] However,Ms. Stanford, as a

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[17] **Although standing was an issue earlier in this case, it was not pressed by the government a trial. However, standing is a matter of a federal court's subject matter jurisdiction and is therefore properly considered by this Court sua sponte. See Bischoff v.**

possessor, has standing in her individual capacity to pursue the claim, and the Court's analysis proceeds accordingly.

B.Probable Cause

If the claimant demonstrates that he or she has standing to assert a claim to the seized property, the burden shifts to the government to show probable cause for the seizure and forfeiture. See One Parcel of Real Estate, 963 F.2d at 1500. In order to meet its burden on probable cause, the government must show that "it has a reasonable ground for belief of guilt, supported by less than prima facie proof but more than reasonable suspicion." Id.at 1501 (quoatations omitted).[18] The Eleventh Circuit has clarified this requirement by explaining that at this stage of a section 881 (a)(6) forfeiture proceeding, the government must show "probable cause that there is a substantial connection between the [seized] property and illegal drug transactions....." United States v.900 Rio Vista Blvd.,803 F.2d 625, 629 n.3(11th Cir.1986). It is the trial

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Osceola County, Florida, 222 F.3d 874,877-78(11th Cir.2000).

[18] The probable cause threshold in a drug forfeiture case is the same as the probable cause threshold which is applicable everywhere else." United States v. $506.231 in United States Currency, 125 F.3d 442, 451 (7th Cir.1997); see also United States v.One Parcel of Real Estate, 852 F. Supp.1013, 1032 (S.D.Fla.1994).

court's responsibility to determine whether the government has met its burden on this issue. See id.[19] in evaluating the totality of the circumstances included in the government's probable cause case, a trial court is not to affect some form of "clinical detachment," but rather should take " a common sense view to the ralities of normal life." United States v. Carrell, 252 F.3d 1193, 1201 (11th Cir.2001), quoting United States v.Four Million, Two Hundred Fifty-Five Thousand, 762 F.2d 895, 903, 904 (11th Cir.1985).

The critical issue facing this Court, however, is what real-world requirements this legal definition imports and places on the government. On the one hand, viewing factual evidence in the sterile and removed setting of a federal courtroom risks rendering nugatory any sort of commonsense understanding of how much of this country's illicit drug trafficking operates. Such a determination would ignore reality. On the other hand, to allow the government to meet its burden by importing into a given set of suspicious and perhaps even criminal circumstances a fairly tenuous theory

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[19] The government's probable cause evidence "may include facts learned after the actual seizure of the money." United States v.$41,305.0 in Currency and Traveler's Checks, 802 F.2d 1339, 1343 (11th Cir.1986), citing United States v. Four Million, Two Hundred Fifty-Five Thousand, 762 F.2d 895, 902 n.12(11th Cir.1985).

connecting the facts to an illegal narcotics transaction risks transforming this particular federal statute into a general panacea for the country's crime problem as a whole. Such a result may expand law enforcement's power well beyond the scope of Congress's intentions. See United States v. $31,990 in United States Currency, 982 F.2d 851, 856 (2d Cir.1993) ("Since 'there is little to discourage federal agents from seizing property illegally and then seeking evidence of probable cause, 'courts must guard against the abuse of forfeiture in the government's zeal to apprehend and prosecute drug dealers."), citing George C.Pratt & William B. Peterson, Civil Forfeiture in the Second Circuit, 65 St. John's L. Rev.653, 668-69(1991). The Eleventh Circuit vocalized this strugglein United States v. $38,000 in United States Currency, 816 F.2d 1538 (11th Cir.1987), when it stated

> We are not unsympathetic to the government's strong desire to eradicate drug trafficking: we recognize that illegal drugs pose a tremendous threat to the integrity of our system of government. We must not forget, however, that at the core of this system lies the Constitution, with its guarantees of individuals' rights. We cannot permit these rights to become fatalities of the government's war on drugs.

Id. at 1543-49."Accordingly, courts must cautiously balance the government's

strong desire to eradicate illicit drug trafficking against constitutional guarantees of individual rights." United States v. One Parcel of Real Estate at 1012 Germantown Road, 963 F.2d 1496,1500 (11th Cir.1992).[20]

Based upon a review of the law in this area from the Eleventh Circuit and the other Courts of Appeals, there is no consensus as to what exactly constitutes such probable cause. The factually intensive nature of the inquiry has given rise to a plethora of opinions reaching differing results based on similar circumstances. For this reason, a brief review of some of the relevant caselaw is warranted here.

In United States v. Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960) in United States Currency, 661 F.2d 319 (5th Cir.Unit B 1981), the Fifth Circuit reversed the district court's grant of summary judgment in favor of the claimant, which the district court had granted due to its conclusion that the government had not met its burden concerning probable cause to forfeit. In that case, the

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[20] **See also,e.g.,United States v.$31,990 in United States Currency, 982 F.2d 851, 856 (2d Cir. 1993) ("While we recognize the formidable task faced by the government in its war on drugs, we decline to condone the abuse of civil forfeiture as a means to winning that war.").**

police found two Colombian aliens[21] in an apartment in which the men proclaimed to have no interest. See id.at 323-24. A cursory search of the apartment uncovered "narcotics paraphernalia, guns," and the money in question. Id. at 324. The court held that " under these circumstances," a large amount of currency was enough for a court legitimately to "infer a connection with illegal narcotics trafficking." Id. Similarly, in United States v.$41,305.00 in Currency and Traveler's Checks, 802 F.2d 1339 (11th Cir.1986), the court found probable cause to forfeit monies found in the claimant's home where the facts included that the claimant's husband "had a reputation among law enforcement authorities as a dealer in narcotics" and had recently delivered a kilo of cocaine; and that claimant's husband was subsequently prosecuted and received a life for narcotics-related crimes. Id.at 1343-1344 & 1344 n.8.
These cases presented sufficient evidence to conclude that there was probable cause to believe that the seized property was connected to illegal narcotics.

More recently, the Eleventh Circuit has examined and found probable cause sufficient to subject currency to forfeiture in the

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[21] The court specifically noted that Colombia was "a country where large amounts of the narcotics that enter the United States originate....." Id.ay 323-24.

context of an airport interdiction. See United States v. $121,000.00 in United States Currency, 999 F.2d 1503 (11th Cir.1993). There, an individual was approached by DEA officials at the airport gate of the individual's Atlanta-to-New York flight. Airline officials had alerted the DEA agents to the fact the day before this individual had purchased a round trip ticket, in cash,[22] with an itinerary calling for him to fly to New York in the morning and return to Atlanta that same evening. See id.at 1505. Additionally, the ticket was issued under a false first name. The individual was "quite nervous" when questioned by the DEA officials, was carrying nearly a quarter of a million dollars in cash, and, "critically [he] had a history of narcotics arrests and convictions." Id.at 1507 (emphasis in original). On these facts, the Eleventh Circuit found that the government had probable cause to seize the currency under 21 U.S.C.& 881.

The common thread running through all of these cases, and distinguishing them from the one at bar, appears to be the existence of at least some direct evidence connecting

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[22] **The court noted that, "[a]s the Supreme Court has explained,'[m]ost business travelers....purchase airline tickets by credit card or check so as to have a record for tax or business purposes.'" 999 F.2d at 1507, quoting United States v. Sokolow, 490 U.S.1,8-9(1989).**

the seized currency to narcotics activity.[23] Should such a factor be dispositive of the issue, especially in light of the directive that trial courts should not view the evidence through the lens of "clinical detachment" but rather through informed, real-world experience and knowledge?

The answer is suggested in United States v.Four Million, Two Hundred Fifty-

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[23] The sometimes arbitrary nature of this inquiry into the currency-narcotics nexus is well illustrated by the Ninth Circuit's recent analysis in United States v.$22,474.00 in U.S.Currency, 246 F.3d 1212(9th Cir.2001). In that case, the court was faced with the facts remarkably similar to those presented by an earlier Ninth Circuit case, United States v. $49,576.00 in U.S.Currency, 116 F.3d 425 (9th Cir.1997), where the government had failed to establish probable cause. In distinguishing this earlier case, the $22,474.00 court stated

> In that[earlier]case, a drug detention dog alerted to currency, the claimant fit a drug courier profile, he gave evasive and dishonest answers to questions by law enforcement officers, and he had once been detained, nut not charged, in connection with a drug-related crime. We held that although the circumstances established probable cause to believe that the claimant was involved in some illegal activity, there was no evidence connecting that activity with narcotics. The present case is different. Here,[claimant]admitted he had been convicted of trafficking in cocaine. This was sufficient, when added to the sophisticated dog sniff and all of the other factors, tip the scales in favor of establishing probable cause.

Id.at 1217 (citations omitted; emphasis in original). The difference seems slight at best.

Five Thousand, 762 F.2d 895 (11th Cir.1985), where the appellate court affirmed the district court's finding of probable cause to forfeit even where there was no direct connection between the currency and one or more narcotics transactions. The evidence included " a huge amount of money" routed through a Colombian citizen's Miami bank account, id. at 903; that the oftentimes unidentified couriers who delivered the money to the bank "did not request, and on at least several occasions refused to accept, receipts for the cash, "id.; that the cash consisted of small and medium denomination bills; and that the cash was delivered in a variety of containers, including cardboard boxes and duffel bags. See id. Although the record contained no direct evidence of any connection with narcotics transactions, the Eleventh Circuit concluded that under the totality of the circumstances, probable cause did exist to " to believe that a 'substantial connection' existed between the forfeited money and narcotics transactions." Id. The court "emphasize[d] that, here, it is the totality of the circumstances, and not merely the nationality of the couriers or the amount of money involved," that established probable cause. Id.at 903n.18. Therefore, the substantial connection" required by section 881 may be found despite a lack of direct evidence to that effect.

Two recent cases from other circuits seem to have imposed a more rigid approach to the analysis of whether a "substantial connection" has been made. For example, in United States v. $506.231 in United States Currency, 125 F.3d 442 97th Cir.1997), a search of a Chicago pizzeria executed pursuant to a search warrant uncovered more than half a million dollars in cash and three unregistered handguns. See id. at 444. The money, consisting mostly of small bills and wrapped in plastic bags, had been secreted in a forty -four gallon barrel and stashed inside some sort of elevator or dumbwaiter shaft. See id. After the seizure, a narcotics-detection dog alerted to the presence of narcotics on one of the many bundles of seized currency. See id. at 453. Based on this evidence, combined with the fact that no allegations were made "that narcotics were used inside or at the pizzeria, that any narcotics transactions occurred inside or at the pizzeria, or that there was ever any money (much less the money in issue here) exchanged for narcotics inside or at the pizzeria," id. at 452-53, the Seventh Circuit held that the government had failed to meet its probable cause burden. Because of this ruling, the court never reached the point of explaining how a small Chicago pizzeria "operat[ing] only as a pizza parlor" had that much cash in small bills hidden in its dumbwaiter shaft. Id.at 454.

Even more recently, in United States v. Ten Thousand Seven Hundred Dollars and No Cents ($10,700.00)in United States Currency, 258 F.3d 215 (3d Cir. 2001), the third Circuit also weighed in against the government's seizure of money in a civil forfeiture action. In that case, three men in a rented vehicle were stopped for traveling ten miles per hour over the posted speed limit along Interstate 295 through Delaware. The men were nervous and gave varying answers when asked about the group's travel plans. See id.at 219. A consensual search of the vehicle's trunk revealed $21,000 in cash inside a plastic bag in a backpack and $8,000 inside a duffel bag. Additionally, $2,950 was found on one of the men's person. A drug-detection dog's positive alert on the currency and the results of an ION Scan Analysis both indicated the presence of narcotics on the money. See id.at 220. However, the appellate court found that on these facts, the government did not have probable cause to seize the currency. See id. at 234. In reaching this conclusion, the court questioned the evidentiary significance of the discrepancies concerning to where and for what the men were traveling; the men's nervousness upon being questioned; the information the police had received regarding the high drug-trafficking neighborhood of Wilmington, Delaware, in which the men lived; one of the men's 1995 conviction for conspiracy to traffic in

cocaine; and the dog alert and the results of the ION Scan Analysis. See id. at 226-34. The court summed up by stating that "[w]hile some of the factors upon which the government relies arguably are suspicious and suggestive of involvement in some illicit activity, and might even support a 'hunch' that the money somehow was connected to the drug trade, they do not rise to the level of establishing probable cause to institute forfeiture proceedings under &881(a)(6)."

The reasoning reflected by these cases, seemingly eschews any sort of "common sense view of the realities of normal life." Carrell, 252 F.3d at 1201. Direct evidence of a connection to narcotics seems from these cases to have become a sine qua non of a legitimate section 881 forfeiture action. Finding that the government failed to establish probable cause to institute the forfeiture action. Finding that the government failed to establish probable cause to institute the forfeiture proceedings in these latter cases meant that the Seventh and Third Circuits avoided requiring the claimants there to explain these admittedly suspicious circumstances. How and why does a Chicago pizzeria have nearly half a million dollars in small bills on hand? Why do three men traveling through Delaware in a rented vehicle have more than twenty thousand dollars in cash when they are unable to proffer the same reason as to

where they are going and for what purpose? Perhaps this is normatively how things should operate-the individuals in question should not have to explain their respective situations without a more direct evidentiary case being put on by the government. The Court would not quarrel with this proposition-if that is what "probable cause" meant. These cases, however, seem to heighten the "probable cause" threshold. The overall issue pinions on who should bear the burden of explaining the circumstances and more precisely, when this burden shifts from the government to establish probable cause to the claimant to explain it away.

Based on the facts in the case at bar, and keeping in mind the lens through which they are to be viewed, This Court finds that the government here has met its initial probable cause burden. Although this is admittedly a close question, the totality of the circumstances, and not one factor standing alone, sufficiently evidences the required connection to illegal narcotics.

First, the quantity of cash Ms. Stanford was carrying and its physical condition is indicative of illicit activity. Although the Court well recognizes that this factor has never in and of itself been held to be sufficient to establish probable cause, see $121,100.0, 999 F.2d at 1506("No court, to our knowledge, has held that the quantity of seized currency alone passes this totality

of the circumstances test."), it is relevant and constitutes one factor in the overall consideration. See id. at 1507 ("Although insufficient by itself to demonstrate a connection to illegal drugs, the quantity of cash seized in this case is highly probative of a connection to some illegal activity."); see also United States v. Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars($364,960.00) in United States Currency, 661 F.2d 319, 324 (5th Cir.Unit B 1981). Ms. Stanford was carrying almost a quarter of a million dollars, in cash, wrapped in plastic and Christmas wrapping, on a public flight. Although it is far from criminal in the United States to carry a large amount of currency, it is as indicative of narcotics activity as it is of anything else, as one would be hard-pressed to encounter a dealer in narcotics who accepted a personal check or credit card payment. However, "[t]hat the evidence presented would support an alternative hypothesis does not prevent it being probative on the issue of probable cause." Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960.00) in United States Currency, 661 F.2d at 324. additionally, the packaging of the currency is highly suspicious, as it shows that the money had not been counted and bundled at a bank, as one would expect when dealing with such a large amount of currency. The Christmas wrapping suggests an intention to conceal the currency consistent with the

behavior of a courier of drug proceeds. The amount and condition of the money, then, is one factor weighing in favor of a finding or probable cause.[24] Second, the route and circumstances surrounding Ms. Stanford's travel is in line with typical drug transactions. Although allegedly on a business trip, Ms. Stanford purchased th ticket in cash, one factor in the totality of the circumstances. See $121,000.00 in United States Currency, 999 F.2d at 1507. As Agent Johnson testified, in his experience as a DEA official, drug organizations often utilize the Miami-to-New York flight corridor to disseminate drugs from South Florida, where many drugs initially enter

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[24] The narcotics-detention dog's alert to the currency is also worth noting, although perhaps worth little else. The evidentiary value of an "alert" to currency by one of these canines has seriously been questioned of late. See, e.g.,$506,231 in United States Currency, 125 F.3d at 453 & n.8; United States v. U.S.Currency, $30,060.00, 39 F.3d 1039, 1041-43(9th Cir.1994); United States v. $53,082.0 in United States Currency, 985 F.2d 245, 250 n.596th Cir.1993); United States v.$639,558.00 in United States Currency, 955 F.2d 712, 714 n.2(D.C.Cir.1992). All else being equal, however, the money upon which a narcotics dog "alerts" is more likely to have come into contact with narcotics at some time in the fairly recent past than money upon which a drug dog does not alert. Therefore, although weak, this factor is relevant here. See contamination of currency plainly lessens the impact of dog sniff evidence, a trained dog's alert still retains some probative value.").

the country. See United States v. Cooper, 873 F.2d 269, 274 (11th Cir. 1989)("Miami, Florida, is a significant drug distribution city for the entire United States."); United States v. Forero-Rincon, 626 F.2d 218, 220(2d Cir.1980)("[T]he DEA has designated Miami as a 'source city' that is, a city from which narcotics are frequently carried into the New York City area for distribution....."). The reverse path, New York to Miami, is used to bring the proceeds from these drugs back to South Florida. The present facts fit with this scenario. Of course, not all people traveling between these cities are suspects from whom the government may legitimately seize even extremely large amounts of cash. However, when viewed as part of the totality of the circumstances, and considering the real-world happenings as testified to by those who know-including DEA Agent Miles and Johnson-this is one more factor weighing in favor of a finding of probable cause. Third, Ms. Stanford's lack of knowledge concerning the circumstances surronding her trip to New York and the receipt of this money, including her inability to identify from whom she received it, is suspicious.[25]

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[25] **The NADDIS report, revealing that at some time there had been a report concerning the possible involvement of Ms. Stanford's business in a money laundering operation, also has some slight relevance. The report's value in the probable cause case is negligible, however, due to the issues of credibility that it brings to the table. See supra note 6.**

One would reasonably expect that someone receiving such money would know the names of such people. Furthermore, Ms. Stanford was unable to produce to the DEA any sort of documentation regarding the receipt of this money. This is in line with the DEA's assertion-and a commonsense understanding-that drug and drug-money couriers are usually kept in the dark as to the sources' identities so as to minimize the possibility of a detained or arrested courier providing such information to law enforcement authorities, Additionally, when questioned by the DEA, Ms. Stanford was unable or unwilling to tell them where she stayed in New York. Such suspicious and evasive answers, although far from dispositive of the issue, add to the government's probable cause case. See, e.g.,United States v. One Lot of U.S.Currency ($36,634), 103 F.3d 1048, 1055 (1st Cir.1997); United States v.$37,780,920 F.2d 159, 163(2d Cir.1990).

It is also of some significance that Ms. Stanford twice was a "no show" for her scheduled departure from New York to Miami. In the end, she boarded a flight bound for Miami two days later than her original itinerary. Drug Enforcement officials are cognizant of the fact that "drug deals are often delayed, causing participants to have to stay in a location longer than anticipated....." United States v. Espinosa-Guerra, 805 F.2d 1502, 1508 (11th Cir.1986). The Court finds no reason that this would

not hold equally true as concerns transactions related to the actual drug deal, such as an exchange of money. This is but one more factor in the probable cause determination.

Thus, in sum, the totality of the circumstances here support the conclusion that the government carried its burden of establishing probable cause to believe that the money in question was subject to forfeiture under 21 U.S.C. & 881.[26] Evidence sufficient to shift the burden to claimants in a forfeiture proceeding need not provide conclusive proof,...but rather a reasonable ground for belief. That the evidence

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[26] The Court finds that the procedural structure of this civil forfeiture action informs the analysis of the government's probable cause case as well. If the burden the claimant bears in order to get the money back from the government were more than the "preponderance of the evidence" standard, perhaps courts would appropriately subject the government's evidence to closer scrutiny. This is, however, not the situation under the law applicable here. See Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960.00) in United States Currency, 661 F.2d at 324 ("We note also that our holding does not result automatically in forfeiture; it merely shifts the burden to claimants to rebut the government's theory."); see also State of Georgia, Dep't of Med. Assistance v.Shalala, 8 f.3d 1565, 1572 (11th Cir.1994) ("Under common statutory interpretation principles, this Court must look at the 'particular statutory language at issue, as well as the language and design of the statute as a whole.'"), quoting Sullivan v. Everhart, 494 U.S.83, 89(1990).

presented would support an alternative hypothesis does not prevent it being probative on the issue of probable cause." Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960.00) in United States Currency, 661 F.2d at 324. As a logical deduction from the proposition that evidence is to be seen in the coloring light of common sense, "probable cause may be based wholly on circumstantial evidence." $41,305.00 in Currency and Traveler's Checks, 802 F.2d at 1343. Such is the case at bar. Therefore, the burden shifted to Ms. Stanford, the claimant, to prove that the money derived from a legitimate source or that she qualified as an "innocent owner".

C. Claimant's Burden

Once the government meets its initial probable cause burden, "the ultimate burden falls upon the claimant to prove by a preponderance of the evidence a defense to the forfeiture…." United Stated v. Two Parcels of Real Property Located in Russell County, Alabama, 92 F.3d 1123, 1126 (11th Cir. 1996). "This burden is met either by rebutting the government's evidence" that the property is not and was not purchased with proceeds of a narcotics transaction "or a showing that the claimant is an 'innocent owner" who did not know of the property's connection with drugs sales." United States v. One Single Family Residence, 933 F.2d 976, 979 (11th Cir.1991). "Innocent owners are those who have no knowledge of the

illegal activities and who have not consented to the illegal activities." Id.at 981. If the claimant fails to satisfy one of these two requirements, the asset is forfeit.

First, Ms. Stanford was unable to prove by a preponderance of the evidence that the money at issue was not in fact the proceeds of an illegal narcotics transaction. Ms. Stanford claimed that the money derived from Mike's Import and Export USA, Inc.("Mike's"), of which she at all times has been a principal.[27] She testified that Mike's at times would receive money from Surinamese individuals in the New York area, which would be used to buy goods and ship them to recipients in Surinam. It would seem relatively simple for Ms. Stanford to have come forth with proper documentation of this, such as receipts for the money received. At trial, Ms. Stanford failed to explain exactly how Mike's made money on a transaction such as the one described. Especially because Ms. Stanford bore the burden of proving the currency's legitimacy,

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[27] Trial testimony was confusing as to who controlled this business entity and when. It appears that although Ms. Stanford is currently the sole shareholder and President of Mike's, her brother Wilbert, also played some role in the business's operations during December of 1999, when this seizure occurred.

this would seem to be fairly important.[28] Additionally, the Court finds it telling that there is absolutely no evidence or allegations of any of these individuals coming forward in the time between the seizure and the trial in an attempt to obtain their money from Mike's.

Furthermore, when questioned at trial, Ms. Stanford claimed that she had stayed in Brooklyn with "some friends," whom she claimed to be "friends of long-standing," although she could not identify these "friends."[29] At trial, she testified that she

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[28] The business of laundering money is itself fairly lucrative. Back in 1994, one writer described how, "[I]n the eight years since money laundering has become a federal crime and the U.S. government has begun to concentrate resources on its enforcement, the cost of laundering money has risen from 6 percent to a maximum of 26 percent for full-service laundering: pickup, transfer to multiple banks, merging with funds from legal sources and finally inverstment." David A. Andelman, The Drug Money Maze, 73 Foreign Affairs 108 (July/Aug.1994). The process cash is deposited in an account, then the steps to commingle the dirty money with legitimate financial transactions- seems to correspond with the occurrences here. Ms. Stanford was found with a large amount of cash which came from an unexplained source and had an uncertain destination. These circumstances factor into the analysis of Ms. Stanford's assertions. Ms. Stanford had the burden of proving the money's legitimacy by a preponderance of the evidence; this congruence seems to add to her inability to do so.

[29] It appears that Ms. Stanford gave conflicting testimony at trial concerning whether she at one time

picked up the money from two men whom she could not identify at a café in Brooklyn that she could not describe. The Court finds this lack of knowledge probative on the issue of the legitimacy of the money. As mentioned above, the burden was on Ms. Stanford to come up with such evidence of the money's legitimacy. Such a lack of knowledge concerning the basic facts and circumstances surrounding the receipt of almost a quarter of a million dollars in cash does little in the way of helping Ms. Stanford meet her burden here.

At trial, the government offered evidence of various wire transfers between banks in New York and Mike's. See Gov't Exhs.25,26. This was not a business unfamiliar with wire transfers. However, none of the wire transfers approached the

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knew the names of these two men or not. She at first stated that "I was told their names, who was, I was told their names and in order to identify them I had to have their names."

However, on cross-examination, Ms. Stanford stated the following:

> **A.....And these were individuals that knew the persons that were there and they picked up the money and I received it from them.**
>
> **Q. And who are they? What is the name of these people?**

A. These were two individuals that made payment to me. If someone is making payment to you, you accept the payment, knowing what you are supposed to receive you accept the payment and I won't go into the background of asking them who are you and, you know, what is your qualifications and all of that.

amount of cash carried by Ms. Stanford. Moreover, while the records show some cash deposits, all were of small amount. Mike's business records do not provide any explanation for this transaction. Therefore, based on the testimony and evidence presented by Ms. Stanford, the claimant, the Court finds that she did not carry her burden of establishing the money's legitimacy by a preponderance of the evidence.

A claimant may also avoid forfeiture by proving that he or she was an "innocent owner". On the facts here, the Court finds that ms. Stanford was unable to do this. First, Ms. Stanford did not claim to be an "owner." As has already been discussed, Ms. Stanford claims to have been unaware of the circumstances surrounding the receipt of this money other than that her brother called her and told her to pick it up. However, this does not entitle her or her company to receiving the benefit of the "innocent owner" defense to forfeiture. See United States v. Milbrand, 58 F.3d 841, 844 (2d Cir. 1995)("Where an owner has engaged in willful blindness as to activities occurring on her property, her ignorance will not entitle her to avoid forfeiture."), quoting United States v. One Parcel of Real Property, Located at 755 Forest Road, 985 F.2d 70,72 (2d Cir, 19930. Furthermore, it is not the government's burden to prove that the claimant had such knowledge, but rather "it is the claimant's responsibility to

prove the absence of actual knowledge." Four Million, Two Hundred Fifty-Five Thousand, 762 F.2d at 907 (emphasis in original). Ms. Stanford did not offer any evidence on this defense at trial. The Court finds that Ms. Stanford failed to carry her burden on the "innocent owner" defense, and the property is therefore subject to forfeiture.

IV. Conclusion

The Court finds that based upon the totality of the circumstances as viewed with an eye toward a commonsense interpretation of these circumstances, the government established probable cause for forfeiture of the money in question. There was no violation of the Fourth Amendment, and therefore all of the government's evidence was properly considered. Ms. Stanford was then unable to meet her burden and avoid such forfeiture. Final Judgment in favor of the Government will be entered by separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 5 day of October 2001.

DONALD M.MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

c.c.Lornette A. Reynolds,AUSA
Douglas L. Williams, Esq.